

1 Christopher R. Kaup, State Bar No. 014820  
2 J. Daryl Dorsey State Bar No. 024237



**TIFFANY & BOSCO**  
P.A.

3 Third Floor, Camelback Esplanade II  
4 2525 East Camelback Road  
5 Phoenix, Arizona 85016-4237  
6 Telephone: (602) 255-6000  
7 Facsimile: (602) 255-0103  
8 E-Mail: [crk@tblaw.com](mailto:crk@tblaw.com); [jdd@tblaw.com](mailto:jdd@tblaw.com)  
9 *Attorneys for HIE Servicing, LLC*

10  
11 **UNITED STATES BANKRUPTCY COURT**  
12 **FOR THE DISTRICT OF ARIZONA**

13 In re:

14 SUNRISE HOSPITALITY, LLC,  
15  
16 Debtor.

Chapter 11

Case No. 4:09-26457-JMM

17  
18 **CHAPTER 11 PLAN OF**  
19 **REORGANIZATION PROPOSED BY**  
20 **HIE SERVICING, L.L.C.,**

21  
22  
23  
24  
25  
26  
HIE Servicing, L.L.C. ("HIE "), the senior secured creditor of Sunrise Hospitality, LLC (the "Debtor"), by and through its undersigned counsel, hereby submits this Chapter 11 Plan of Reorganization (the "Plan").

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6

3  
4  
5  
6  
7  
88  
9

0  
1  
2  
3  
4  
5

0  
7  
89  
20

21  
22  
23  
24  
25  
26

of Claims shall mean a Claim (or any Claim in such Class) that is allowed, pursuant to the requirements of this definition.

**2.4 Assumed Executory Contract or Contracts.** This term will refer to and mean every unexpired lease and other contract that is being assumed under 11 U.S.C. § 365 pursuant to this Plan that are identified on Schedule 1 to this Plan.

**2.5 Assumed Liabilities.** This term will refer to all of the Debtor's liabilities that will be assumed by the Reorganized Debtor pursuant to the terms of this Plan as set forth more fully in Articles VI and VII below.

**2.6 Ballot.** This term will refer to and mean the ballot for accepting or rejecting the Plan which will be distributed to Creditors entitled to vote on the Plan.

**2.7 Bankruptcy Code.** This term will refer to and mean Title 11 of the United States Code, 11 U.S.C. §§101, *et seq.*, as it may be amended from time to time during the Chapter 11 Cases, and applicable portions of Title 18 and 28 of the United States Code, as amended.

**2.8 Bankruptcy Court or Court.** These terms are completely synonymous and interchangeable, and will refer to and mean the United States Bankruptcy Court for the District of Arizona, or such other court which exercises jurisdiction over part or all of the Estates, including the United States District Court for the District of Arizona to the extent that the reference of part or all of the Chapter 11 Cases are withdrawn.

**2.9 Bankruptcy Estates or Estates.** This term will refer to and mean the Estates created pursuant to 11 U.S.C. §541 when the Debtor filed their Chapter 11 Cases.

**2.10 Bankruptcy Rules.** This term will refer to and mean the Federal Rules of Bankruptcy Procedure.

**2.11 Bar Date.** This term will refer to and mean the last day for filing proofs of claims, which was May 24, 2010, the date previously set by the Bankruptcy Court. All Creditors (except Creditors with Administrative Claims that arise after the Administrative Claim Bar Date, and Creditors holding Claims from the rejection of unexpired leases or Executory Contracts) must have filed proofs of claim by the Bar Date, or their Claim shall be forever barred and discharged.

**2.12 BDFC.** This term will refer to and mean Business Development Finance Corporation, the holder of a second position deed of trust against the Hotel.

**2.13 BDFC New Note.** This term will refer to and mean the secured promissory note to be issued to BDFC on the Effective Date in the amount of \$2,000,000.00. which shall contain the following terms: (a) payment of \$150,000.00 on the seventh business day after the Effective Date; (b) no interest; (c) payment of 35% of the Net Cash Flow until the sale of the Hotel and Personal Property; (d) payment of 35% of the Net Sale Proceeds at which time the BDFC Note shall be paid in full and satisfied and all liens held by BDFC shall be released; and (e) secured by a second position deed of trust on the Hotel junior to the HIE New Note.

1       **2.14 Business Day.** This term will refer to and mean every day except  
2 Saturdays, Sundays, and legal holidays, as defined in Federal Rule of Bankruptcy  
Procedure 9006.

3       **2.15 Cash.** This term will refer to and mean cash, cash equivalents, bank  
4 deposits, and negotiable instruments payable on demand.

5       **2.16 Causes of Action.** This term will refer to and mean the Retained Avoidance  
6 Actions and Retained Litigation Claims, collectively.

7       **2.17 Chapter 11 Case.** This term will refer to and mean the Chapter 11 case  
8 commenced by the Debtor currently pending in the Bankruptcy Court at Case No. 4:09-  
26457-JMM.

9       **2.18 Claim or Claims.** This term will refer to and mean “claim” as defined in  
10 Bankruptcy Code §101(5).

11       **2.19 Class or Classes.** This term will refer to and mean each of the  
12 classifications of Claims and Equity Interests as described in Article III of the Plan.

13       **2.20 Confirmation Date.** This term will refer to and mean the date on which the  
14 Bankruptcy Court enters the Confirmation Order.

15       **2.21 Confirmation Hearing.** This term will refer to and mean the hearing  
16 regarding confirmation of the Plan conducted pursuant to Bankruptcy Code § 1128, as  
17 adjourned or continued from time to time.

18       **2.22 Confirmation Order.** This term will refer to and mean the order entered by  
19 the Bankruptcy Court which confirms the Plan pursuant to Bankruptcy Code § 1129.

20       **2.23 Creditor or Creditors.** This term will refer to and mean “creditor” as  
21 defined in Bankruptcy Code §101(10).

22       **2.24 Debtor.** This term will refer to and mean together Sunrise Hospitality,  
23 L.L.C., an Arizona limited liability company.

24       **2.25 Debtor’s Professionals.** This term will refer to and mean the law firm of  
25 Deconcini, McDonald, Yetwin & Lacy, P.C.

26       **2.26 Debtor’s Schedules.** This term will refer to the Debtor’s Schedules of  
Assets and Liabilities that Debtor filed in the Chapter 11 Case.

**2.27 Disclosure Statement.** This term will refer to and mean the Disclosure  
Statement prepared by HIE with respect to the Plan, and approved by the Bankruptcy  
Court, including, but not limited to, any modification(s) and additional disclosure(s) (if  
any) provided by the Debtor to comply with Bankruptcy Code § 1127(c).

**2.28 Disputed Claim.** This term will refer to and mean every Claim which is not  
an Allowed Claim.

1       **2.29 Effective Date.** This term will refer to and mean the earlier of the thirtieth  
2 (30th) day after the Confirmation Order has become a Final Order provided that all of the  
3 conditions set forth in Section 13.1 of this Plan have been satisfied.

4       **2.30 Equity Interests.** This term will refer to and mean all equity, stock, or  
5 claims subordinated under Bankruptcy Code § 510(b) relating to the Debtor.

6       **2.31 Estates' Assets.** This term will refer to and mean the property of the  
7 Bankruptcy Estates as that term is defined in Bankruptcy Code § 541.

8       **2.32 Excluded Assets.** This term will refer to (i) the Transferred Avoidance  
9 Actions, and (ii) the Transferred Litigation Claims, and (iii) all other assets that are not  
10 Retained Assets.

11       **2.33 Final Order.** This term will refer to and mean an order of judgment of the  
12 Bankruptcy Court which shall not have been reversed, stayed, modified, or amended and  
13 the time to appeal from, or to seek review or rehearing of, shall have expired as to which  
14 no appeal or petition for review or rehearing is pending, or if appealed from, shall have  
15 been affirmed and no further hearing, appeal, or petition for review can be taken or  
16 granted, or as to which no stay has been entered to affect the operative provisions of such  
17 order of judgment.

18       **2.34 HHFI.** This term refers to and means Holiday Hospitality Franchising, Inc.,  
19 the franchisor of Debtor, pursuant to that certain contract entered into by and between  
20 HHFI and Debtor on or about September 13, 2005.

21       **2.35 HIE Cash Equity Contribution.** This term refers to and means the  
22 payment of \$150,000.00 HIE will make on the Effective Date to the Reorganized Debtor  
23 as a contribution s to the equity of that company.

24       **2.36 HIE New Note.** This term will refer to and mean the new promissory note  
25 to be issued to HIE on the Effective Date in the amount of \$3,000,000 and which will be  
26 secured by a new deed of trust in first position against the Hotel.

**2.37 HIE Total Equity Contribution.** This term refers to and means the HIE  
Cash Equity Contribution plus the conversion by HIE of approximately \$200,000 of debt  
owed to HIE by the Debtor that shall occur on the Effective Date.

**2.38 HIE Unsecured Note.** This term will refer to and mean the unsecured  
promissory note to be issued to HIE on the Effective Date in the amount of \$2,300,000.00  
and which shall not bear interest.

**2.39 Hotel.** This terms shall mean the real estate and structure which is a  
Holiday Inn Express Suites hotel owned and operated by Debtor located at 1200 Sunrise  
Plaza Drive, Florence, Arizona. The Hotel consists of 53,878 square feet, 90 rooms and a  
parking lot on 2.44 acres.

**2.40 Inter-Creditor Agreement.** An agreement to be entered into between  
BDFC and HIE containing the material terms set forth in Article VII below.

1       **2.41 Liquidating Agent.** This term will refer to and mean the entity or  
2 individual, as appointed by the Bankruptcy Court pursuant to the Confirmation Order, to  
3 be vested with the authority pursuant to this Plan and the Liquidating Trust, or such other  
4 person who shall be appointed by the Bankruptcy Court.

5       **2.42 Liquidating Trust.** This term will refer to and mean the liquidating trust  
6 that is created and governed by the Liquidating Trust Agreement.

7       **2.43 Liquidating Trust Agreement.** This term will refer to and mean the  
8 Liquidating Trust Agreement that is attached as Schedule 2 to this Plan.

9       **2.44 Loan Documents.** This term will mean the loan documents between HIE  
10 and the Debtor and the loan documents between BDFC and the Debtor that created,  
11 evidence and secure the Permitted Liens.

12       **2.45 Modified Loan Documents.** This term will mean the Loan Documents as  
13 modified or amended by this Plan.

14       **2.46 Net Cash Flow.** This term will mean the funds remaining after payment of  
15 ordinary operating expenses, debt service associated with the Chapter 11 Case and Plan  
16 (payments for Allowed Administrative Claims, Allowed Priority Tax Claims, HHFI  
17 Allowed Unsecured Claims), debt service associated with the HIE New Note taxes and  
18 insurance.

19       **2.47 Net Sale Proceeds.** This term will mean the funds remaining from the sale  
20 of the Hotel and Personal Property after payment of commissions, closing costs, taxes and  
21 the remaining balance due, if any, under the terms of the Plan for and on account of  
22 Allowed Administrative Claims, Allowed Priority Tax Claims, HHFI, and the amount, if  
23 any, remaining to be distributed to holders of Allowed Unsecured Claims as set forth in  
24 Class 7 of this Plan.

25       **2.48 Person.** This term will refer to and mean “person” as defined in Bankruptcy  
26 Code § 101(41).

**2.49 Personal Property.** This term will refer to all property owned by the  
Debtor other than the Hotel.

**2.50 Petition Date.** This term will refer to and mean October 19, 2009, the date  
the voluntary Chapter 11 petitions of the Debtor.

**2.51 Plan.** This term will refer to and mean this “Plan Of Reorganization  
Proposed By HIE dated June 16, 2010” and every modification thereof, if any, filed by the  
Plan Proponent.

**2.52 Plan Documents.** This term will refer to this Plan, the Disclosure  
Statement, the Liquidating Trust Agreement, the Modified Loan Documents, any exhibits  
attached to the Plan and the Disclosure Statement and any other related documents.

**2.53 Plan Proponent or Proponent.** These term will refer to HIE.

1       **2.54 Post-Confirmation Litigation.** This term will refer to and mean the  
2 prosecution of any of the Causes of Action transferred to the Liquidation Trust by the  
Liquidating Agent on behalf of the Liquidating Trust.

3       **2.55 Priority Tax Claims.** This term will refer to the priority tax claims that  
4 will be classified and paid under the Plan as the Plan provides for Class 2 Claims.

5       **2.56 Priority Non Tax Claim.** This term will refer to and mean every  
6 Unsecured Claim or portion thereof which is not an Administrative Claim, and which is  
entitled to priority under the applicable provision(s) of Bankruptcy Code §507 and that  
will be classified and paid under the Plan as the Plan provides for Class 1 Claims.

7       **2.57 Professional Fees.** This term will refer to and mean any of the interim and  
8 final professional fees and expenses charged by the Debtor' Professionals.

9       **2.58 Pro Rata.** This term will refer to and mean the proportion that an Allowed  
Claim in a particular Class bears to the total amount of all Allowed Claims in that Class.

10       **2.59 Receiver.** This term will refer to and mean Resolute Commercial Services,  
11 LLC, c/o John Mitchell according to Order Appointing Receiver entered by the Superior  
Court of Arizona, Maricopa County, dated October 6, 2009 in Case No. CV2009-030791  
12 and the additional Stipulated Order entered by the Bankruptcy Court in the Chapter 11  
Case.

13       **2.60 Rejected Executory Contract or Contracts.** This term will refer to and  
14 mean every unexpired lease and other contract which is not an Assumed Executory  
Contract.

15       **2.61 Reorganized Debtor** shall mean the entity succeeding to the property  
16 interests of the Debtor on the Effective Date and having the rights, powers, duties and  
interests granted the "Reorganized Debtor" set forth in the Plan and granted entities  
having plans of reorganization confirmed under Chapter 11 of the Code.

17       **2.62 Retained Assets.** This term will refer to all of the Debtor' assets, including  
18 without limitation, (i) all of the Estates' Assets; (ii) all assets listed in the Debtor'  
Schedules; (iii) all business licenses; (iv) all intellectual property, including trademarks,  
19 trade names, copyrights, and service marks; (v) all personal property located on or at the  
Hotel; (vi) all of the Debtor' Cash; (vi) the Debtor's operations at the Hotel; and (ix)  
20 Retained Avoidance Actions and Retained Litigation Claims. This term specifically  
excludes all of the Excluded Assets.

21       **2.63 Retained Avoidance Actions.** This term will refer to all statutory causes of  
22 actions under the Bankruptcy Code, including but not limited to §§ 506, 510, 542, 543,  
544, 547, 548, 549, 550 and 1123(b), that the Debtor and their Estates may have against  
23 HIE and BDFC.

24       **2.64 Retained Litigation Claims.** This term will refer to all rights, claims, torts,  
25 liens, liabilities, obligations, actions, causes of action, avoiding powers, proceedings,  
debts, contracts, judgments, offsets, damages and demands whatsoever in law or in equity,  
whether known or unknown, contingent or otherwise that the Debtor and its Estate may  
26 have against BDFC and HIE.

1       **2.65 Transferred Avoidance Actions.** All statutory causes of actions preserved  
2 for the Debtor' Estates under §§ 506, 510, 542, 543, 544, 547, 548, 549, 550 and 1123(b)  
3 of the Bankruptcy Code, except for the Retained Avoidance Actions. Failure to list a  
Transferred Avoidance Action in the Plan or the Disclosure Statement does not constitute  
a waiver or release of such Retained Avoidance Action.

4       **2.66 Transferred Litigation Claims.** This term will refer to and mean all rights,  
5 claims, torts, liens, liabilities, obligations, actions, causes of action, avoiding powers,  
6 proceedings, debts, contracts, judgments, offsets, damages and demands whatsoever in  
7 law or in equity, whether known or unknown, contingent or otherwise, including, without  
8 limitations, any legal malpractice claims or breach of fiduciary duty claims, that the  
Debtor and their Estates may have against any Person. Transferred Litigation Claims  
shall not include the Retained Avoidance Actions nor Retained Litigation Claims. Failure  
to list a Transferred Litigation Claim in the Plan or the Disclosure Statement does not  
constitute a waiver or release of such Transferred Litigation Claim.

9       **2.67 Rules of Construction.** Wherever from the context it appears appropriate,  
10 each term stated in either the singular or the plural shall include the singular and the  
11 plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the  
12 masculine, the feminine, and the neuter. The words "herein," "hereof," "hereto,"  
13 "hereunder," and others of similar import refer to the Plan as a whole and not to any  
14 particular section, subsection, or clause contained in the Plan. Unless otherwise specified,  
all section, schedule, or exhibit references in the Plan are to the respective section in,  
schedule to, or exhibit to the Plan. The headings in the Plan are for convenience of  
reference only and shall not limit or otherwise affect the provisions of the Plan. The  
Rules of Construction contained in Section 102 of the Bankruptcy Code shall apply to the  
construction of the Plan.

15       **2.68 Secured Claim.** This term will refer to and mean every Claim or portion  
16 thereof which is secured by a lien, security interest, or assignment encumbering property  
17 (including all types of real property, personal property, and cash collateral) in which the  
18 Debtor have an interest, to the extent of the validity, perfection, and enforceability of the  
claimed lien, security interest, or assignment and the value of the interest of the Creditor  
holding the Secured Claim against the property.

19       **2.69 Secured Creditor.** This term will refer to and mean every Creditor who  
holds a Secured Claim against the Debtor.

20       **2.70 Secured Tax Claim.** This term will refer to and mean every Claim of any  
21 state or local governmental unit which is secured by property of the Estates by operation  
22 of applicable non-bankruptcy laws, including, but not limited to, every such Claim for  
23 unpaid real property taxes, unpaid personal property taxes, or unpaid sales taxes or leasing  
taxes, and further including, but not limited to, any and all pre-petition date secured tax  
claims and the post-effective date secured tax claims.

24       **2.71 Vestin Note.** This term shall refer to the promissory note issued by HIE  
in favor of Vestin \_\_\_\_\_.



**ARTICLE III**  
**CLASSIFICATION OF CLAIMS**

**3.1 General.** Pursuant to this Plan and in accordance with § 1123(a)(1) of the Bankruptcy Code, all Claims and Equity Interests (except Administrative Claims) are placed in the Classes described below. A Claim or Equity Interest is classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and is classified in other Classes only to the extent that any remainder of the Claim or Equity Interest qualifies within the description of such other Classes. A Claim is also classified in a particular Class only to the extent that such Claim has not been paid, released, or otherwise satisfied prior to the Effective Date. As of the Confirmation Hearing, any Class of Claims which does not contain any Creditor's Claim will be deemed deleted automatically from the Plan; and any Class of Claims which does not contain an Allowed Claim (or a Claim temporarily or provisionally allowed by the Bankruptcy Court for voting purposes) will be deemed deleted automatically from the Plan with respect to the voting on confirmation of the Plan.

**3.2 Classification.**

**3.2.1 Unclassified: Administrative Claims.** The Assumed Administrative Claims will be all of the Debtor's Professionals Allowed Administrative Claims.

**3.2.2 Class 1: Priority Non Tax Claims.** The Class 1 Claims will be all Claims that are entitled to priority under §§ 507(a)(4), (a)(5) and (a)(7) of the Bankruptcy Code. **Impaired.**

**3.2.3 Class 2: Priority Tax Claims.** The Class 2 Claims will be all Claims which are entitled to priority under §§507(a)(8) and (c) of the Bankruptcy Code. **Impaired.**

**3.2.4 Class 3: HIE Secured Claim.** The Class 3 Claim will be the Allowed Secured Claim of HIE. The aggregate amount of the debt owed to HIE is approximately \$5,500,000.00 as of the date of the filing of this Plan. However, HIE has agreed, only for the purposes of the Plan, that the secured portion of its Claim shall be capped in the amount of \$5,000,000.00 and the balance of its Claim shall be treated as an Unsecured Claim. **Impaired.**

**3.2.5 Class 4: BDFC Partially Secured Claim.** The Class 4 Claim will be the Allowed Secured Claim of BDFC. The aggregate amount of BDFC's Claim is approximately \$2,000,000.00. The Proponent has agreed, only for the purposes of the Plan, that BDFC shall be treated as having an Allowed Secured Claim in the amount of \$500,000.00. **Impaired.**

**3.2.6 Class 5: Miscellaneous Secured Claims.** The Class 5 Claims will be all other Secured Claims and Secured Tax Claims which are not otherwise classified herein. Each holder of a Secured Claim in Class 5 is considered to be in its own separate subclass within Class 5, and each subclass is deemed to be a separate Class for purposes of the Plan. **Impaired.**

1                   **3.2.7     Class 6: HHFI Claim for Franchise Fees.** The Class 6 Claims  
2 will be the Claims for unpaid royalties and franchise fees owed to HHFI which  
Proponent proposes be cured pursuant to the terms of this Plan. **Impaired.**

3                   **3.2.8     Class 7: Unsecured Claims.** The Class 7 Claims will be all  
4 Claims which are Unsecured Claims pursuant to the Plan. **Impaired.**

5                   **3.2.9     Class 8: Equity Interests.** The Class 8 Claims will consist of  
6 the Equity Interests in the Debtor. **Impaired.** For purposes of this Plan, the Equity  
Interests are deemed to have rejected the Plan.

## 7   **ARTICLE IV**

### 8   **VALUE OF HOTEL**

9                   **4.1     Value of Hotel.** Unless the Bankruptcy Court holds a hearing to determine  
10 the value of the Hotel prior to Confirmation, the value of the Hotel for the purposes of  
Confirmation shall be 5,200,000.00, the value of the Hotel as determined by an appraiser,  
11 Mr. Jan Sell, retained by HIE. HIE believes the value of the Hotel, as stabilized in 2013,  
is 6,020,000.00 based on the Sell Appraisal.

12                   **4.2     Valuation Hearing.** If any Creditor or party in interest disputes the value  
13 of the Hotel as set forth above in this Article, they shall be required to file an Objection  
identifying their dispute with that valuation, the value he, she or it asserts as the correct  
14 valuation for the Hotel and the basis, including an appraisal, for that alleged valuation.  
The Court will conduct a valuation hearing as part of the Confirmation Hearing if the  
15 requirements of this Article 4.2 have been satisfied.

## 16   **ARTICLE V**

### 17   **MEANS FOR EXECUTION OF THE PLAN**

18                   The means for execution of the Plan are and will be as follows:

19                   **5.1     Retained Assets.** On the Effective Date, all of the Debtor's right title and  
20 interest in the Retained Assets shall be deemed transferred to and held by the Reorganized  
Debtor free and clear of all liens, claims, encumbrances and interests pursuant to 11  
21 U.S.C. §363(f).

22                   **5.2     Assumed Liabilities.** On the Effective Date, Reorganized Debtor shall  
23 assume and be liable only for the Assumed Liabilities.

24                   **5.3     Transfer of Excluded Assets and Creation of Liquidating Trust.** On the  
25 Effective Date or as soon thereafter as practicable all Excluded Assets, including but not  
26 limited to the Transferred Litigation Claims and the Transferred Avoidance Actions shall  
be transferred and assigned to the Liquidating Trust for the benefit of all remaining unpaid  
Allowed Claims. In accordance with Section 1123(b) of the Bankruptcy Code, the  
Liquidating Agent shall become vested with, in its capacity as the representative of the  
Debtor's Estates under section 1123(b)(3)(B) of the Bankruptcy Code, and may enforce,  
sue on, settle or compromise (or decline to do any of the foregoing) any of the Transferred  
Litigation Claims and Transferred Avoidance Actions.

1 Pursuant to the Liquidating Trust, the Liquidating Agent will, among other things,  
2 collect, administer and distribute in accordance with the terms of the Plan and the  
3 Liquidating Trust the proceeds from the Transferred Litigation Claims and the Transferred  
4 Avoidance Actions and the proceeds related to the sale or transfer of any other Excluded  
Assets. The terms of the Liquidating Trust will be controlled by the Liquidating Trust  
Agreement.

5 The Liquidating Trust will provide that Holders of Allowed Unsecured Claims, if  
6 any, entitled to distributions from the Liquidating Trust will receive payment on a *pro*  
7 *rata* basis after the payment of any legal or other professional fees and costs of the  
Liquidating Trust.

8 The Liquidating Trust is intended to qualify as a “grantor trust” for federal income  
9 tax purposes and the Liquidating Agent shall operate and maintain the Liquidating Trust  
10 in compliance with the guidelines for liquidating trusts as set forth in Internal Revenue  
11 Service Revenue Procedure 94-45, 1994-2 C.B. 684, and Treasury Regulation Section  
1.671-4(a) and all subsequent guidelines regarding liquidating trusts issued by the Internal  
Revenue Service.

12 For United States federal and applicable state income tax purposes, the transfer of  
13 the assets to the Liquidating Trust pursuant to and in accordance with the Plan shall be  
14 reported as a disposition of the assets directly to and for the benefit of the beneficiaries  
15 immediately followed by a contribution of the assets by the beneficiaries to the  
Liquidating Trust for the benefit of the beneficiaries. The beneficiaries will be treated as  
the grantors and deemed owners of the Liquidating Trust.

16 To the full extent permitted by law, all rights under (i) Section 363(h) of the  
17 Bankruptcy Code and (ii) Section 365 of the Bankruptcy Code (including without  
18 limitation Section 365(f) thereof) are preserved for the benefit of the Estates and their  
creditors, and may be exercised by the Liquidating Agent with the approval of the  
Bankruptcy Court.

19 As soon as practicable after the Effective Date, the Liquidating Agent may, if  
20 reasonably deemed necessary by the Liquidating Agent, make a good faith valuation of  
21 the trust assets. Such valuation shall be made available from time to time to the extent  
22 relevant as reasonably determined by the Liquidating Agent and shall be used consistently  
23 by all parties (including the Debtor, the Liquidating Agent and the beneficiaries) for all  
24 purposes, including federal and applicable state income tax purposes. Notwithstanding the  
foregoing, any such valuation shall not be binding upon the Liquidating Agent with  
respect to liquidation of assets or any other action taken pursuant to the Plan.

1        Upon the distribution of all assets vested in the Liquidating Trust and the  
2        preparation and filing of any tax returns required by the Liquidating Trust, the Liquidating  
3        Trust shall be terminated and the Liquidating Agent shall have no further responsibilities  
4        or duties.

5        **5.4    Funding on the Effective Date.** All payments under the Plan which are  
6        due on the Effective Date pursuant to the terms of the Plan will be funded or paid by any  
7        and all Cash in any accounts belong to Debtor and, in the event there is not sufficient Cash  
8        to make all such payments, by HIE.

9        **5.5    Payments Effective on Tender.** Whenever the Plan requires a payment to  
10       be made, such payment will be deemed made and effective upon tender thereof by the  
11       Reorganized Debtor or the Liquidating Agent to the Creditor to whom payment is due.  
12       Such tender will be effective when and if made in Cash. If any Creditor refuses a tender,  
13       the amount tendered and refused will be held by the Reorganized Debtor or the  
14       Liquidating Agent for the benefit of that Creditor pending final adjudication of the  
15       dispute. However, when and if the dispute is finally adjudicated and the Creditor receives  
16       the funds previously tendered and refused, the Creditor will be obliged to apply the funds  
17       in accordance with the Plan as of the date of the tender; and while a dispute is pending and  
18       after adjudication thereof, the Creditor will not have the right to claim interest or other  
19       charges or to exercise any other right which would be enforceable by the Creditor if the  
20       Debtor or the Liquidating Agent failed to pay the tendered payment.

21       **5.6    Operative Documents.** The Plan Proponent may prepare any and all  
22       documents, including, but not limited to, modification documents, which are necessary or  
23       appropriate to execute the Plan. If there is any dispute regarding the reasonableness or  
24       propriety of any such documents after reasonable and good faith efforts by the Plan  
25       Proponent to negotiate and obtain approval of the documents by the other affected  
26       Person(s), any such dispute will be presented to the Bankruptcy Court for determination at  
     or in conjunction with the Confirmation Hearing.

## 21       **ARTICLE VI** 22       **TREATMENT OF UNCLASSIFIED CLAIMS**

23       As provided in Section 1123(a)(1) of the Bankruptcy Code, Administrative Claims  
24       are not classified for purposes of voting on, or receiving distributions under, the Plan.  
25       Holders of such Claims are not entitled to vote on the Plan. All such Claims are instead  
26       treated in accordance with the requirements set forth in section 1129(a)(9)(A) of the  
     Bankruptcy Code. The holder of each Allowed Administrative Claim shall be paid in full  
     in Cash upon the later to occur of (a) the Effective Date, or as soon thereafter as

1 practicable; or (b) the fourteenth (14<sup>th</sup>) Business Day after such claim is Allowed, or as  
2 soon thereafter as practicable.

3  
4 **ARTICLE VII**  
**TREATMENT OF CLAIMS AND EQUITY INTERESTS**

5 **7.1 Treatment of Class 1: (Priority Non Tax Claims).** To the extent that the  
6 Priority Non Tax Claims have not already been paid, holders of Allowed Class 1 Claims  
7 entitled to priority under §§ 507(a)(3), (a)(5) and (a)(7) of the Bankruptcy Code will be  
8 paid by the Reorganized Debtor in the manner provided and required by the Code. To the  
9 extent not paid on the Effective Date, claims in this Class shall be Assumed Liabilities  
only to the extent of and only pursuant to the terms of the treatment provided by this  
provision of the Plan.

10 **7.2 Treatment of Class 2 (Priority Tax Claims).** To the extent that the  
11 Priority Tax Claims have not already been paid, holders of Allowed Class 2 Claims shall  
12 receive on account of each such claim, based on the sole discretion of the Reorganized  
13 Debtor, either (a) a cash payment in the full amount of the Allowed Priority Tax Claim on  
14 the Effective Date or upon the expiration of the appeal period of the order allowing such  
15 claim, whichever is later; or (b) deferred payments during a period not exceeding five  
16 years after the Petition Date equal to the allowed amount of such claim, which payments  
shall include interest on the allowed claim at the appropriate statutory rate. To the extent  
not paid on the Effective Date, Allowed Claims in this Class shall be Assumed Liabilities  
only to the extent of and only pursuant to the terms of the treatment provided by this  
provision of the Plan.

17 **7.3 Treatment of Class 3 (HIE Secured Claim).** HIE's Secured Claim shall  
18 be paid in the following manner: On the Effective Date, (A) HIE or its nominee shall be  
19 issued the HIE New Note secured by a deed of trust in first position in the Hotel and  
20 security interest in the Personal Property with an initial principal balance of \$3,000,000.00  
21 having an interest rate of 15% payable as follows: (1) \$20,000.00 per month during 2010;  
22 (2) \$30,000.00 per month during 2011; (3) \$35,000.00 per month during 2012 and 2013;  
23 (4) \$40,000.00 per month during 2014 and 2015; and (5) the remaining principal balance  
24 of the HIE New Note plus all accrued but unpaid interest, fees and costs shall be due on  
25 December 31, 2015; (B) HIE will be issued the HIE Unsecured Note in the amount of  
\$2,000,000.00 payable as follows: (1) no interest; (2) HIE will be paid 65% of the Net  
Cash Flow from the operations of the Hotel each quarter after the Effective Date; and (3)  
Upon a sale of the Hotel, HIE will be paid 65% of the Net Sale Proceeds; and (C) convert  
the remaining balance of its Claim, approximately \$500,000.00, into equity in the

1 Reorganized Debtor. The amount due or which may become payable to HIE under the  
2 terms of this provision of the Plan is an Assumed Liability.

3 HIE shall enter into the Inter-Creditor Agreement with BDFC on the Effective  
4 Date. In addition, HIE shall make the HIE Cash Equity Contribution on the Effective  
5 Date. HIE shall own 100% of the membership interests in the Reorganized Debtor on the  
6 Effective Date immediately upon conversion of the difference between to total amount of  
7 its Secured Claim and the amount of the HIE New Note and the HIE Unsecured Note. In  
8 the event the HIE New Note and the HIE Unsecured Note are paid in full prior to payment  
9 of the BDFC New Note, HIE shall retain the right to be paid 35% of the Net Cash Flow  
10 and Net Sale Proceeds as equity distributions.

11 HIE's prepetition note, deed of trust and any other liens and claims against the  
12 Debtor, the Hotel and the Personal Property shall be cancelled, void and released only as  
13 to the Debtor and the Reorganized Debtor as of the Effective Date. Nothing in this Plan is  
14 intended to release or may be construed to release any claims and causes of action held by  
15 HIE against any guarantors of the indebtedness owed by the Debtor to HIE.

16 **7.4 Treatment of Class 4 (BDFC Partially Secured Claim).** BDFC' partially  
17 Secured Claim shall be paid in the following manner: On the Effective Date BDFC shall  
18 be issued the BDFC New Note, payable as follows: (A) no interest; (B) \$150,000.00 ten  
19 business days after the Effective Date; (C) 35% of the Net Cash Flow from the operations  
20 of the Hotel each quarter after the Effective Date; (D) Upon a sale of the Hotel BDFC will  
21 be paid 65% of the first \$5.5. million of the Net Sale Proceeds; and (E) BDFC shall be  
22 required to subordinate its second position deed of trust securing the BDFC New Note to  
23 any new note and deed of trust of any creditor which may be willing to refinance the HIE  
24 New Note on terms and conditions that are more favorable for the Reorganized Debtor  
25 than the Vestin Note. The BDFC New Note shall be cancelled, void and released upon  
26 the payment to BDFC of the amounts set forth in this section including the portion of the  
Net Sale Proceeds due and payable to BDFC pursuant to this section of the Plan. The  
amount due or which may become payable to BDFC under the terms of this provision of  
the Plan is an Assumed Liability.

21 The balance of BDFC' Allowed Claim in the amount of approximately  
22 \$1,500,000.00 shall be treated as unsecured in accordance with the terms of Class 7  
23 below.

24 BDFC shall enter into the Inter-Creditor Agreement with HIE on the Effective  
25 Date.

26 BDFC' prepetition note, deed of trust and any other liens and claims against the  
Debtor, the Hotel and the Personal Property shall be cancelled, void and released only as

1 to the Debtor and the Reorganized Debtor as of the Effective Date. Nothing in this Plan is  
2 intended to release or may be construed to release any claims and causes of action held by  
BDFC against any guarantors of the indebtedness owed by the Debtor to BDFC.

3 **7.5 Treatment of Class 5 (Miscellaneous Secured Claims).** The Proponent  
4 believes there are no persons holding claims in this Class. However, if a creditor files a  
5 Claim that is Allowed and determined to have a lien against the Hotel or the Personal  
6 Property, that Claim, when Allowed, shall be treated in this Class. Any lien held by a  
7 Creditor holding a Claim in this Class shall be void, cancelled, released and have no  
further or continuing effect, by operation of the Confirmation Order, because there is no  
equity in the Hotel or the Personal Property in excess of the amount of the Allowed  
Secured Claim of HIE and the Allowed Claim of BDFC. The holder of an Allowed Class  
5 Claim, if any, shall be treated as unsecured in accordance with the terms of Class 7  
below.

8 **7.6 Treatment of Class 6 (HHFI Claim for Franchise Fees).** The Class 6  
9 Allowed Claims of HHFI for unpaid royalties and franchise fees in the amount of  
10 approximately \$56,000.00 owed to HHFI will be paid in full in order to cure prepetition  
11 defaults under the agreements between HHFI and Debtor in equal monthly payments  
12 beginning on the first Business Day that is 30 days after the Effective Date over a period  
which shall not exceed six months. The amount due or which may become payable to  
HHFI under the terms of this provision of the Plan is an Assumed Liability.

13 **7.7 Treatment of Class 7 (Unassumed Unsecured Claims).** Each holder of an  
14 Allowed Class 7 Claim will be paid: (A) his, her or its *pro rata* portion of a total pool of  
15 \$100,000.00 to be paid by the Reorganized Debtor over a period of four years by  
16 distributing \$25,000.00 on a *pro rata* basis on the one year anniversary of the Effective  
17 Date, \$25,000.00 on a *pro rata* basis on the second year anniversary of the Effective  
18 Date, \$25,000.00 on a *pro rata* basis on the third year anniversary of the Effective Date,  
and \$25,000.00 on a *pro rata* basis on the fourth year anniversary of the Effective Date;  
19 (B) his, her or its *pro rata* portion of the net proceeds held by the Liquidating Trust after  
it has settled, litigated, sold or otherwise liquidated all of the Excluded Assets. Allowed  
Class 7 Claims are not Assumed Liabilities.

20 **7.8 Treatment of Class 8 (Equity Interests).** All Equity Interests shall be  
21 cancelled and terminated as of the Effective Date. The holders of Allowed Equity  
22 Interests shall not receive or retain any property under the Plan. Class 8 is impaired by the  
Plan and is deemed to have rejected the Plan.

23 **7.9 The Inter-Creditor Agreement.** On the Effective Date, HIE and BDFC  
24 shall enter into the Inter-Creditor Agreement to protect the rights of BDFC which shall  
25 provide for the following terms: (a) HIE shall select a professional management company  
26 to manage and operate the Hotel; (b) HIE shall have the sole and exclusive right and  
discretion to negotiate and accept any offers for the purchase of the Property and enter

1 into a Purchase and Sale Agreement as to the Property for a sale price that shall be not less  
2 than \$5,100,000.00 (the Minimum Sale Price”); and such other terms and conditions that  
3 are standard and commercially reasonable in such agreements between creditors.

## 4 **ARTICLE VIII**

### 5 **TREATMENT OF EXECUTORY CONTRACTS**

6 **8.1 Assumption of Assumed Executory Contracts.** On the Effective Date,  
7 Reorganized Debtor shall hereby assume all the Executory Contracts with HHFI and the  
8 other Executory Contracts that are identified on Schedule 1 to this Plan pursuant to 11  
9 U.S.C. § 365.

10 **8.2 Rejection of Rejected Executory Contracts.** On the Effective Date,  
11 Debtor shall hereby reject all Rejected Executory Contracts pursuant to 11 U.S.C. §365.

12 **8.3 Cure Amounts.** Any cure amount associated with each Assumed  
13 Executory Contract, other than the Executory Contract with HHFI treated separately  
14 above, will be satisfied by Reorganized Debtor, pursuant to Section 365(b)(1) of the  
15 Bankruptcy Code, at the option of Reorganized Debtor (i) by payment of the cure amount  
in cash within a reasonable time after the Effective Date, (ii) by such other terms as are  
agreed to by the parties, or (iii) in the event of a dispute over a cure amount, within twenty  
(20) days of a Final Order resolving the cure amount; provided, however, that if the cure  
amount determined by Final Order is unacceptable to Reorganized Debtor, then  
Reorganized Debtor shall have ten (10) days from the date of the Final Order to reject the  
Assumed Unexpired Real Property Lease or Assumed Executory Contract pursuant to a  
written motion filed with the Bankruptcy Court, and such Assumed Executory Contract  
shall be deemed to never have been assumed.

16 **8.4 Rejection Claims Bar Date.** Every Claim asserted by a Creditor arising  
17 from the rejection of a Rejected Executory Contract must be filed with the Bankruptcy  
18 Court no later than the first Business Day which is twenty (20) days after the  
19 Confirmation Date. Every such Claim which is timely filed, as and when it becomes an  
20 Allowed Claim, will be treated under Class 7 of the Plan. Every such Claim which is not  
21 timely filed by the deadline stated above will be forever barred and discharged and the  
22 Creditor holding the Claim will not receive or be entitled to any distribution under the  
23 Plan on account of such Claim.

## 24 **ARTICLE IX**

### 25 **DISCHARGE**

26 **9.1 Discharge of Claims and Termination of Equity Interests.** Except as  
otherwise provided herein or in the Confirmation Order, the rights afforded in this Plan  
and the payments and distributions to be made hereunder shall discharge and release all  
existing debts and Claims, and terminate all Equity Interests, of any kind, nature or  
description whatsoever against or in the Debtor, the Reorganized Debtor, the Liquidating  
Trust or any of their assets or properties to the fullest extent permitted by section 1141 of  
the Bankruptcy Code. Except as provided in this Plan, upon the Effective Date, all Claims  
against and Equity Interests in the Debtor, regardless of whether or not (i) a proof of  
Claim or Equity Interest has been filed or is or was deemed filed, (ii) such Claim or  
Equity Interest was listed on any of the Debtor' Schedules, (iii) such Claim or Equity



1 Interest was Allowed, or (iv) the holder of such Claim or Equity Interest has voted to  
2 accept or reject this Plan, shall be, and shall be deemed to be, discharged, released and  
3 terminated, and all holders of Claims and Equity Interests shall be precluded and enjoined  
4 from asserting against the Debtor, Reorganized Debtor, the Liquidating Trust, or any of  
5 their assets or properties, any other or further Claim or Equity Interest based upon any act  
6 or omission, transaction, or other activity of any kind or nature that occurred prior to the  
7 Effective Date, whether or not such holder has filed a proof of Claim or proof of Equity  
8 Interest.

9 **9.2 Discharge of Debtor.** Except as otherwise provided herein or in the  
10 Confirmation Order, upon the Effective Date, and in consideration of the distributions to  
11 be made hereunder, each holder (as well as any trustees and agents on behalf of each  
12 holder) of a Claim or Equity Interest and any affiliate of such holder, regardless of  
13 whether or not (i) a proof of Claim or Equity Interest has been filed, (ii) such Claim or  
14 Equity Interest was Allowed, or (iii) the holder of such Claim or Equity Interest has voted  
15 to accept or reject this Plan, shall be deemed to have forever waived, released and  
16 discharged the Debtor, Reorganized Debtor, and the Liquidating Trust, to the fullest  
17 extent permitted by section 1141 of the Bankruptcy Code, of and from any and all Claims,  
18 Equity Interests, rights and liabilities that arose prior to the Effective Date. Upon the  
19 Effective Date, all such Persons shall be forever precluded and enjoined, pursuant to  
20 section 524 of the Bankruptcy Code, from prosecuting or asserting any such discharged  
21 Claim against Reorganized Debtor or terminated Equity Interest in Reorganized Debtor.

22 **9.3 Exculpations.** HIE, BDFC, and their respective members, officers,  
23 directors, employees, agents, attorneys, financial advisors or professionals shall not have  
24 or incur any liability to any holder of any Claim or Equity Interest for any act or omission  
25 arising out of or in connection with the Chapter 11 Cases, the administration of assets of  
26 the Debtor's Estates, the confirmation of this Plan, the consummation of this Plan, or the  
administration of this Plan or property to be distributed under the Plan, except for willful  
misconduct or gross negligence. HIE, BDFC, and their respective members, officers,  
directors, employees, agents, attorneys, financial advisors or professionals shall be  
deemed to have acted in good faith with regard to the solicitation of acceptances or  
rejections of this Plan and shall be entitled to the protections afforded by section 1125(e)  
of the Bankruptcy Code. Entry of the Confirmation Order shall act as a comprehensive  
release of and injunction against the bringing of any claim or cause of action with respect  
to any such liability.

21 **9.4 Injunction Against Interference With Plan.** Upon the entry of the  
22 Confirmation Order, all holders of Claims and Equity Interests and other parties in  
23 interest, along with their respective present or former employees, agents, officers,  
24 directors or principals, shall be enjoined from taking any actions to interfere with the  
25 implementation or consummation of this Plan.

## 26 **ARTICLE X**

### **RETENTION OF JURISDICTION**

Notwithstanding confirmation of the Plan, the Bankruptcy Court will retain  
jurisdiction for the following purposes:

**10.1 In General.** The Bankruptcy Court will retain jurisdiction to determine the  
allowance and payment of any Claim(s) upon any objection(s) thereto (or other

appropriate proceedings) by the Debtor, HIE, BDFC, by the Liquidating Agent, or by any other party-in-interest entitled to proceed in that manner. As part of such retained jurisdiction, the Bankruptcy Court will continue to determine the allowance of Administrative Claims and any request(s) for payment(s) thereof, including Administrative Claims for Professional Fees.

**10.2 Plan Disputes and Enforcement.** The Bankruptcy Court will retain jurisdiction to determine any dispute(s) which may arise regarding the interpretation of any provision(s) of the Plan. The Court also will retain jurisdiction to enforce any provisions of the Plan and any and all documents relating to the Plan. The Bankruptcy Court will also retain jurisdiction to determine any dispute(s) which may arise regarding any application to modify this Plan in accordance with Section 1127 of the Bankruptcy Code, to remedy any defect or omission or reconcile any inconsistency in this Plan, the Disclosure Statement or any order of the Bankruptcy Court, including the Confirmation Order, in such a manner as may be necessary to carry out the purposes and effects thereof.

**10.3 Further Orders.** The Bankruptcy Court will retain jurisdiction to facilitate the performance of and under the Plan by entering any further necessary or appropriate order(s) regarding enforcement of the Plan and any provision(s) thereof. In addition, the Bankruptcy Court will retain jurisdiction to facilitate or implement the discharge of any Claim or Equity Interest, or any portion thereof, pursuant to the Plan.

**10.4 Claims Against Estates.** The Bankruptcy Court will retain jurisdiction to adjudicate all Claims to a security or ownership interest in any property of the Debtor's Estates or in any proceeds thereof.

**10.5 Other Claims.** The Bankruptcy Court will retain jurisdiction to adjudicate any cause(s) of action or other proceeding(s) presently pending or otherwise referenced here or elsewhere in the Plan, including but not limited to, the adjudication of any and all Litigation Claims, Avoidance Actions, and "core proceedings" under 28 U.S.C. §157(b) which may be pertinent to the case.

**10.6 Final Decree(s).** The Bankruptcy Court will retain jurisdiction to enter an appropriate final decree(s) in the Bankruptcy Case.

**10.7 Appeals.** In the event of an appeal of the Confirmation Order or any other kind of review or challenge to the Confirmation Order, and provided that no stay of the effectiveness of the Confirmation Order has been entered, the Bankruptcy Court will retain jurisdiction to implement and enforce the Confirmation Order and the Plan according to their terms, including, but not limited to, jurisdiction to enter such orders regarding the Plan or the performance thereof as may be necessary to effectuate the reorganization of the Debtor. In addition, to enter, implement or enforce such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, reversed, revoked, modified or vacated

**10.8 Assumed and Rejected Executory Contracts.** The Bankruptcy Court will retain jurisdiction to determine any and all motions regarding assumption or rejection of Assumed or Rejected Executory Contracts and any and all Claims arising therefrom.

**10.9 Pending Matters.** The Bankruptcy Court will retain jurisdiction to hear and determine any motion, application, adversary proceeding, contested matter and other litigated matter pending on the Confirmation Date

**10.10 Distributions.** The Bankruptcy Court will retain jurisdiction to ensure that distributions to holders of Claims are accomplished as provided in this Plan and the Liquidating Trust.

**10.11 Tax Claims.** The Bankruptcy Court will retain jurisdiction to hear and determine matters concerning state, local and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code (including any requested expedited determination of tax under section 505(b) of the Bankruptcy Code).

**10.12 Liquidating Trust.** The Bankruptcy Court will retain jurisdiction to adjudicate any and all disputes between and among the Debtor, the Liquidating Agent, Reorganized Debtor, any Creditor and/or Equity Interest with respect to any dispute under the Liquidating Trust.

**10.13 General Reservation.** The Bankruptcy Court will retain jurisdiction to hear and determine any other matters related hereto and not inconsistent with the Bankruptcy Code and title 28 of the United States Code

## ARTICLE XI

### LIMITATION OF LIABILITY

**11.1 Third Party Release and Injunction.** Upon the Effective Date, except as otherwise provided herein, all Persons shall be deemed to have released, and shall be forever precluded and permanently enjoined from asserting, commencing, conducting, enforcing, attaching, collecting, recovering, perfecting, creating or continuing, in any manner, directly or indirectly, against the Debtor, the Liquidating Agent, and the Reorganized Debtor any (i) Lien, encumbrance, security interest, Equity Interest or charge of any nature or description whatsoever relating to the Debtor, the Chapter 11 Case or affecting property of the Debtor's Estate, (ii) claim or any other Liability relating to the Debtor or the Chapter 11 Case, and (iii) causes of action, whether known or unknown, discovered or undiscovered, scheduled or unscheduled, contingent, fixed, unliquidated or disputed, whether assertable directly or derivatively by, through, or related to the Debtor, matured or unmatured, contingent or noncontingent, senior or subordinated, based upon any condition, event, act, omission, occurrence, transaction or other activity, inactivity, instrument or other agreement of any kind or nature occurring, arising or existing prior to the Effective Date in any way arising out of, relating to or connected with the operation of the Debtor's business or the Chapter 11 Case, all regardless of whether (a) a proof of Claim or Equity Interest has been filed or is deemed to have been filed, (b) such Claim or Equity Interest is Allowed, or (c) the holder of such Claim or Equity Interest has voted to accept or reject this Plan, except for willful misconduct or gross negligence.

**11.2 Post-Confirmation Limitation of Liability.** Upon entry of the Confirmation Order, the Liquidating Agent or any of its/his respective members, officers, directors, employees, agents, attorneys or professionals shall not have or incur any liability to any holder of any Claim or Equity Interest for any act or omission arising out of or in connection with the Chapter 11 Case, the administration of assets of the Debtor's

1 Estates, the confirmation of this Plan, the consummation of this Plan, or the administration  
2 of this Plan or the Liquidating Trust, or property to be distributed under the Liquidating  
Trust, except for willful misconduct or gross negligence.

## 3 4 **ARTICLE XII** **GENERAL PROVISIONS**

5 **12.1 Modification of Plan.** The Plan may only be modified by order of the  
6 Court upon motion by the Plan Proponent, subject to and in accordance with the  
7 provisions and requirements of Section 1127. After the Confirmation Date and prior to  
8 substantial consummation of the Plan as defined in 11 U.S.C. §1101(2) of the Bankruptcy  
Code, the Debtor may, under Section 1127(b) of the Bankruptcy Code, institute  
9 proceedings in the Bankruptcy Court to remedy any defect or omission or reconcile any  
10 inconsistencies in the Plan, the Disclosure Statement, or the Confirmation Order, and such  
matters as may be necessary to carry out the purposes and effects of the Plan so long as  
such proceedings do not materially adversely affect the treatment of holders of Claims or  
Equity Interests under the Plan.

11 **12.2 Revocation or Withdrawal of the Plan.** The Plan Proponent reserves the  
12 right to revoke or withdraw this Plan at any time prior to the Confirmation Date. If the  
13 Plan is withdrawn or revoked, then the Plan shall be deemed null and void and nothing  
14 contained herein shall be deemed to constitute a waiver of any Claims by or against the  
Debtor or any other Person in any further proceedings involving the Debtor. In the event  
this Plan is withdrawn or revoked, nothing set forth herein shall be deemed an admission  
of any sort, and this Plan and any transaction contemplated thereby shall not be admitted  
into evidence in any proceeding.

15 **12.3 Binding Effect.** The Plan shall be binding upon, and shall inure to the  
16 benefit of, the Debtor, the holders of all Claims and Equity Interests, and their respective  
17 successors and assigns with respect to their respective Claims against the Estates' Assets  
or Equity Interests in the Debtor. The Plan is binding on all Creditors and parties-in-  
18 interest who do not (i) timely file an objection with the Bankruptcy Court, with a copy  
served on HIE, (ii) comply with all requirements of the Bankruptcy Code and Bankruptcy  
19 Rules regarding such objections, (iii) appear in person, together with witnesses, unless  
otherwise ordered by the Court, at the Confirmation Hearing, and  
20 (iv) comply with any scheduling order issued by the Court, including complying with any  
briefing requirements and required disclosures of witnesses and exhibits.

21 **12.4 Extension of Payment Dates.** If any payment date falls due on any day  
22 which is not a Business Day, then such payment date will be extended to the next  
Business Day.

23 **12.5 Additional Assurances.** The Debtor, Reorganized Debtor, and the  
24 Creditors holding Claims herein will execute such other and further documents as are  
necessary to implement any of the provisions of the Plan.

25 **12.6 Confirmation by Non-Acceptance Method.** The Debtor hereby request, if  
26 necessary, confirmation of the Plan pursuant to Bankruptcy Code §1129(b), 11 U.S.C.

1 §1129(b), with respect to any impaired Class of Claims or Equity Interests which does not  
2 vote to accept the Plan.

3 **12.7 Vesting.** As of the Effective Date, all property of the Debtor and the Estates  
4 will vest in either Reorganized Debtor or the Liquidating Trust, as provided in Article VI  
5 of this Plan, free and clear of all Claims, liens, security interests, assignments,  
6 encumbrances, charges, and other interests of Creditors (except those Creditors whose  
7 Claims have been modified and restructured and survive as provided in the Plan.)

8 **12.8 Captions.** Section captions used in the Plan are for convenience only, and  
9 will not affect the construction of the Plan.

10 **12.9 Prohibition Against Prepayment Penalties.** If Reorganized Debtor or  
11 Liquidating Agent choose, in their sole and absolute discretion, to prepay any obligation  
12 on which deferred payments are provided for under the Plan, Reorganized Debtor or  
13 Liquidating Agent will not be liable or subject to the assessment of any prepayment  
14 penalty thereon unless otherwise ordered by the Bankruptcy Court. Neither Reorganized  
15 Debtor nor Liquidating Agent will not have any obligation to pay any such prepayment.

16 **12.10 No Attorneys' Fees and Interest.** Other than the fees for the Debtor'  
17 Professionals, no attorneys' fees shall be paid by Debtor or the Reorganized Debtor with  
18 respect to any Claim or Equity Interest except as specified herein or as provided by the  
19 Confirmation Order or other Final Order of the Bankruptcy Court. No interest shall  
20 accrue or be payable in respect of any Claim or Equity Interest whether Disputed or  
21 otherwise.

22 **12.11 Payment of Statutory Fees.** All fees payable pursuant to Section 1930 of  
23 Title 28 of the United States Code, as determined by the Bankruptcy Court at or in  
24 conjunction with the Confirmation Hearing, will be paid on or before the Confirmation  
25 Date.

26 **12.12 Successors and Assigns.** The rights and obligations of any Creditor or any  
holder of an Equity Interest referred to in the Plan will be binding upon, and will inure to  
the benefit of, the successors, assigns, heirs, devisees, executors, and personal  
representatives of such Creditor or such holder of an Equity Interest.

**12.13 Severability and Reformation.** It is the Debtor' intention to comply fully  
with the Bankruptcy Code and applicable non-bankruptcy law in proposing the Plan.  
Therefore, if any provision(s) of the Plan is determined by the Bankruptcy Court to be  
contrary to the Bankruptcy Code or applicable non-bankruptcy law, that provision(s) will  
be deemed severed and automatically deleted from the Plan, if it cannot be reformed; or  
the provision(s) or its interpretation will be deemed reformed to ensure compliance.  
Pursuant to any ruling(s) by the Bankruptcy Court regarding the subject matter of this  
Section, any such severance or reformation will be stated specifically in the Confirmation  
Order, which then will control notwithstanding any contrary or inconsistent provision(s)  
of the Plan.

**12.14 Exemption from Transfer Taxes.** Pursuant to section 1146(a) of the  
Bankruptcy Code (i) the creation of any Lien or other security interest, or (ii) the making  
or assignment of any lease or sublease, or (iii) the making or delivery of any deed or other  
instrument of transfer under, in furtherance of, or in connection with, this Plan, including,

1 without limitation, any restructuring, disposition, liquidation, or dissolution, deeds, bills of  
2 sale, or transfers of tangible property will not be subject to any stamp tax or other similar  
3 tax. Unless the Bankruptcy Court orders otherwise, all sales, transfers and assignments of  
4 owned and leased real and personal property, approved by the Bankruptcy Court on or  
5 prior to the Effective Date shall be deemed to have been in furtherance of, or in  
6 connection with, this Plan.

7 **12.15 Governing Law.** Except to the extent the Bankruptcy Code or Bankruptcy  
8 Rules are applicable, this Plan, the Plan Documents and any agreements, documents, and  
9 instruments executed in connection therewith, shall be governed by, and construed and  
10 enforced in accordance with the laws of the State of Arizona, without giving effect to the  
11 principles of conflicts of law thereof, except as may otherwise be provided in such  
12 agreements, documents, and instruments.

13 **12.16 Time Bar to Payments.** Checks issued by the Liquidating Agent with  
14 respect to Allowed Claims shall be null and void if not negotiated within three (3) months  
15 after the date of issuance thereof. Requests for reissuance of any check shall be made  
16 directly to the Liquidating Agent by the holder of the Allowed Claim with respect to  
17 whom such check originally was issued. Any Claim in respect of such a voided check  
18 shall be made on or before the within four (4) months of the date of issuance of the  
19 particular check. After such date, all Claims in respect of void checks shall be discharged  
20 and forever barred.

21 **12.17 Disclosure Statement.** All Creditors, the holders of all Equity Interests,  
22 and all other interested parties (if any) are referred to in the Disclosure Statement, which  
23 will accompany the Plan in conjunction with any solicitation by the Debtor of acceptances  
24 of the Plan.

## 25 **ARTICLE XIII**

### 26 **CONDITIONS PRECEDENT TO EFFECTIVENESS OF THIS PLAN**

**13.1 Conditions to Effective Date.** The Effective Date of this Plan shall not  
occur unless and until each of the following conditions have been satisfied or waived by  
the Proponent:

(i) the Bankruptcy Court shall have entered the Confirmation Order, the effect of  
which is not stayed;

(ii) all Plan Documents shall have been executed and delivered by the parties  
thereto, or receipt thereof waived by the Debtor and Reorganized Debtor, and any  
conditions to the effectiveness of the Plan Documents shall have been satisfied or waived,  
as provided therein;

(iii) the Liquidating Trust Agreement has been executed;

(v) All licenses and Executory Contracts necessary for the operation of the  
Retained Assets, including any and all agreements with HHFI, are transferable and  
assumable on the Effective Date to Reorganized Debtor.

**13.2 Waiver of Conditions.** Any of the foregoing conditions may be waived by the the Plan Proponent, in whole or in part, without notice, at any time, without an order of the Bankruptcy Court and without any formal action other than proceeding to consummate this Plan.

## ARTICLE XIV

## **CLAIMS BAR DATE AND OBJECTIONS TO CLAIMS**

Claimants holding Claims (other than Administrative Claims and Professional Fees) against the Estates must submit proofs of Claim on or before the Bar Date, which was previously set as May 24, 2010, by the Bankruptcy Court.

Any objection to a Claim (other than Administrative Claims and Professional Fees) must be filed with the Bankruptcy Court and served upon the holder of such Claim pursuant to the Bankruptcy Code and the Bankruptcy Rules no later than ninety (90) days after the Effective Date of the Plan. The Liquidating Agent shall reserve funds sufficient to make distributions in accordance with the Plan on account of all Claims which are subject to objections until such objections are resolved by a Final Order.

## ARTICLE XV

## UNITED STATES TRUSTEE'S FEES

The Reorganized Debtor shall pay all quarterly fees payable to the Office of the United States Trustee for the Debtor after Confirmation, consistent with applicable provisions of the Bankruptcy Code, Bankruptcy Rules, and 28 U.S.C. § 1930(a)(6).

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

DATED this 17 day of June, 2010.

HIE SERVICING, L.L.C.

By: /s/  
Its: Manager

TIFFANY & BOSCO

By: /s/ Christopher R. Kaup  
Christopher R. Kaup  
Camelback Esplanade II  
Third Floor  
2525 East Camelback Road  
Phoenix, Arizona 85016



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**Schedule 1**  
**Assumed Executory Contracts**

1. Any and all agreements between the Debtor and HHFI;

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**Schedule 2**  
**Liquidating Trust Agreement**  
**To Be Supplied**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

